

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 523C.10, the Insurance Division (the Division) hereby rescinds Chapter 54, “Residential Service Contracts,” and adopts new Chapter 103, “Residential Service Contracts,” Iowa Administrative Code.

The adopted Chapter 103 implements Iowa Code chapter 523C. The rescinded Chapter 54 was reviewed according to Iowa Code section 17A.7(2), and new Chapter 103 updates provisions in rescinded Chapter 23, including, among other things, procedures allowing more electronic administration of Iowa Code chapter 523C and the associated rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2666C**. A public hearing was held on August 23, 2016, and written comments were accepted through that date. No comments were received. These amendments are identical to those published under Notice.

These amendments are subject to waiver consistent with the waiver provisions provided at 191—Chapter 4.

These amendments impose no fiscal impact to the State.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 523C.

These amendments shall become effective November 2, 2016.

The following amendments are adopted.

ITEM 1. Rescind and reserve **191—Chapter 54**.

ITEM 2. Adopt the following new 191—Chapter 103:

CHAPTER 103 RESIDENTIAL SERVICE CONTRACTS

191—103.1(523C) Purpose. The purpose of this chapter is to administer Iowa Code chapter 523C, relating to residential service contracts as defined in Iowa Code section 523C.1(9).

191—103.2(523C) Applicability, scope, and definitions.

103.2(1) This chapter shall apply to any person who issues or offers to issue a residential service contract as defined in Iowa Code section 523C.1(9).

103.2(2) This chapter shall apply when an offer to sell a residential service contract is made or accepted in this state. An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to a person in this state.

103.2(3) The definitions in Iowa Code sections 523C.1 and 523C.8A(3) are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“*Division*” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapter 523C.

“*Division’s Web site*” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“*Guarantee or warranty*” means:

1. Any written affirmation or written promise made by a manufacturer or seller in connection with the sale of structural components or any tangible personal property which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is free of defects or will meet a specified level of performance over a specified period of time; or

2. Any written affirmation, promise or undertaking by a manufacturer or seller in connection with the sale of structural components or any tangible personal property to refund, repair, replace or take other remedial action with respect to a product if the product fails to meet the specifications set forth in the

undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain for purposes other than resale.

“Residential customer” means any person (whether or not the person is the owner of the residential property) who purchases a service contract relating to a residential property.

“Residential property” means any single- or multiple-unit structure, including a house, townhouse, condominium, mobile home, or other habitable structure which is used primarily for residential purposes.

“Structural components” means the roof, foundation, basement, walls, ceiling or floors of a residential property.

191—103.3(523C) Application of insurance laws. The sale of a residential service contract by a licensed service company shall not be deemed to include the sale of insurance. Thus, unless the service company is otherwise engaged in the sale of insurance, the provisions of the insurance laws of this state shall not be applicable to any service company granted a license by the division. However, this provision may not be construed to exempt any other warranties or service contracts from the provisions of the insurance laws of this state.

191—103.4(523C) Forms and instructions. Instructions for fees, forms and other filings, and copies of all required forms are available on the division’s Web site.

191—103.5(523C) Fees and costs.

103.5(1) When a service company files a residential service contract form with the division for approval pursuant to Iowa Code section 523C.7, the service company shall also submit a residential service contract form approval fee of \$100 for each form of residential service contract filed; except that, if the residential service contract form is filed as part of the service company’s annual report required by Iowa Code section 523C.15, the fee shall be the amount described in rule 191—103.8(523C).

103.5(2) When the commissioner chooses to conduct an audit or examination pursuant to Iowa Code section 523C.12, the actual costs of the audit or examination shall be borne by the service company being audited or examined. The service company may request that the division waive all or part of the costs.

191—103.6(523C) Prohibited acts or practices.

103.6(1) Defamation. A service company is prohibited from, directly or indirectly, doing, or aiding, abetting or encouraging, the following: the making, publishing, disseminating, or circulating of any oral or written statement, or of any pamphlet, circular, article or literature which is false or maliciously critical as to the financial condition of any person and which is calculated to injure that person.

103.6(2) Boycott, coercion, and intimidation. A service company is prohibited from entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the residential service contract industry.

103.6(3) False statements. A service company is prohibited from knowingly filing with any supervisory or other public official, or knowingly making or causing directly or indirectly to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

103.6(4) False entries. A service company is prohibited from knowingly making any false entry of a material fact in any book, report or statement of any person and from knowingly omitting to make a true entry of any material fact pertaining to the business of that person in any book, report or statement of that person.

103.6(5) Misrepresentation, false advertising, and unfair practices.

a. A service company shall not:

(1) Use in its name, contracts, or literature, any of the words “insurance,” “casualty,” “surety,” “mutual,” or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company. This subparagraph does not apply to a residential service company also licensed as an insurance company.

(2) Represent or imply in any manner that the service company has been sponsored or recommended, or that the service company's abilities or qualifications have in any respect been passed upon, by the division or by the state of Iowa. Nothing in this subrule prohibits a statement, other than in a paid advertisement, that a person has received a license, if the statement is true in fact and if the effect of the license's issuance is not misrepresented.

(3) Without the written consent of the residential customer, knowingly charge for duplication of coverage or duties required by state or federal law, or duplication of a warranty expressly issued by a manufacturer or seller of a product or any implied warranty enforceable against the lessor, seller or manufacturer of a product.

(4) Make, permit or cause any false or misleading statements, either oral or written, in connection with the sale, offer to sell or advertisement of a service contract.

(5) Permit or cause the omission of any material statement that, under the circumstances, should have been made in connection with the sale, offer to sell, or advertisement of a service contract, in order that other statements also made in connection with the sale, offer to sell or advertisement of a service contract would not be misleading.

(6) Make, permit or cause any false or misleading statements, either oral or written, about the benefits or services available under the service contract.

(7) Make, permit or cause any statement or practice which has the effect of creating or maintaining a fraud.

(8) Cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the residential service contract industry or with respect to any service company which is untrue, deceptive or misleading.

b. A bank, savings and loan association, insurance company or other lending institution shall not require the purchase of a residential service contract as a condition of a loan and shall not sell a residential service contract to a borrower unless the borrower signs an affidavit acknowledging that the purchase is not required.

191—103.7(523C) Service company licenses.

103.7(1) A person shall not issue a residential service contract or undertake or arrange to perform services pursuant to a residential service contract unless the person is a corporation, limited liability company, partnership or limited liability partnership and has procured a service company license from the division.

103.7(2) Service company licenses shall not be transferable. A service company which sells its business shall cancel its service company license, and the purchaser of the business shall apply for a new service license under the purchaser's name.

191—103.8(523C) Annual form filing. In addition to the information required by Iowa Code section 523C.15, a licensed service company shall include with its annual report one copy of each residential service contract form to be issued or used in this state, filed for review as an exhibit to the annual report; and a form review fee of 3 percent of the aggregate amount of payments the service company received for residential service contracts in the state during the preceding fiscal year, but the fee shall in no case be less than \$100 or more than \$50,000.

191—103.9(523C) Financial statements and calculation of net worth.

103.9(1) All financial statements, including balance statements, filed pursuant to or prepared for purposes of Iowa Code chapter 523C or this chapter shall be prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

103.9(2) For purposes of Iowa Code section 523C.6, "net worth" means the excess of all assets over liabilities, and any required reserves shall be treated as a liability rather than as an asset.

191—103.10(523C) Records.

103.10(1) All licensed service companies and independent depositories shall keep accurate accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C.

103.10(2) A licensed service company's accounts, books, and records shall include:

- a. Copies of all contracts;
- b. The name and address of each residential customer;
- c. The name and address of each independent depository; and
- d. The dates and amounts of all receipts and expenditures.

103.10(3) A licensed service company shall retain all required accounts, books, and records pertaining to each residential service contract for at least two years after the expiration of the specified period of time.

103.10(4) All licensed service companies and independent depositories shall make all accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C available to the division for the purpose of examination.

103.10(5) A licensed service company discontinuing business in this state shall maintain its records until it furnishes the division satisfactory proof that it has discharged all obligations to contract holders in this state.

191—103.11 to 103.14 Reserved.

191—103.15(523C) Violations. Failure to comply with this chapter or with Iowa Code chapter 523C shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 523C.

These rules are intended to implement Iowa Code chapter 523C.

[Filed 9/8/16, effective 11/2/16]

[Published 9/28/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/28/16.